



Bids and Contracts

POLICY #105	Page 1 of 10
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1. Policy Purpose

The purpose of this policy is to ensure that the department makes effective and efficient use of state and other resources in compliance with established rules, regulations, and guidelines in purchasing services needed to fulfill its mission and goals.

This policy is intended to:

- Establish consistent standards, processes, formats, and language to be used in the purchase of services; and
- Ensure equitable and reasonable competition; and
- Establish a standard procedure for the use of written contracts to purchase services.

2. Scope

This policy applies to all department purchases of services (as defined in section 4). The cabinet secretary shall not sign any bid or contract that does not conform to the requirements of this policy.

This policy has been developed to ensure that the bid and contract process complies with applicable federal and state laws and regulations and the state budget and accounting manual. The policy is not intended to supersede bidding procedures applied to public works, which are defined in [29 Del. C Chapter 69](#). The policy shall not be applied to the purchase of supplies and materials covered by small purchase procedures implemented the Office of Management and Budget.

If conflicts are found to exist, federal or state law or regulation or the state budget and accounting manual shall prevail over this policy. The invalidation of one section of this policy due to such conflict shall not invalidate any other section of this policy.

3. Definitions

Budget: a systematic structured presentation of costs, usually by line-item categories, which governs how the provider can be reimbursed by the department.

Consultant: an individual with specified qualifications, experience, and skills who provides organizational support services to the department on a non-employee basis, for a temporary period.

Contract: a written agreement between the department and the provider, the terms of which are contained completely within a document or included by reference, which has been signed by the contractor and the department and which both parties intend to be legally binding on the signatories. The agreement may specify the activities, expectations, conditions, terms, standards, fees, monitoring, and other actions to be taken by both parties to the agreement.

Contract amendment: a written agreement which, when executed, changes an existing contract. The amendment specifies the changes and requires at least the approval of all signatories to the original contract.

Contract administrator: the department employee designated to manage a contract's administrative responsibilities.

Contract summary sheet: data prepared by the contract administrator that explains services provided and fees which compares changes from the past to current contract periods. The data is made available when the contract documents are being reviewed.

Contractor: any agency, organization, corporation, association, partnership, or individual, either for profit or not-for-profit, who agrees in writing to provide specific services to the department or its clients.

Cost reimbursable contract: a contract that secures services for an entire program or service and stipulates agreement to reimburse the cost for service based on an agreed upon budget and supporting narrative up to an agreed upon amount.

Contract waiver: a document used under special circumstances to waive a contract based on the critical need of a youth impacting health or safety or based on certain Medicaid rules typically not to exceed 45 days at which time a contract should be executed to continue service delivery if the provider is agreeable.

Invitation to bid (ITB): a public written solicitation of bids where the specifications of the product are clearly pre-defined.

Open market purchase: purchase made from a provider not awarded by way of a competitive bidding process.

Program administrator: the employee designated by a purchasing division director to have responsibility for development, implementation, monitoring, and management of day-to-day activities of a contract.

Public Integrity Commission: the State of Delaware commission responsible for reviewing select purchases of service for compliance with Delaware’s ethics law (Code of Conduct) [29 Del. C. sec. 5805](#).

Public works: construction, reconstruction, demolition, alteration and repair work and maintenance work paid for, in whole or in part, with public funds.

Purchase order (PO): an encumbrance against the accounts of the state for the purchase of a specific service or supplies issued by the department and approved by the Department of Finance prior to the expenditure of funds.

Request for letters of interest (RFI): a public written solicitation only to determine the field of potential respondents to deliver a needed service. An RFI may not substitute for a required competitive bid process.

Request for proposals (RFP): a public written solicitation of proposals where the goals, objectives, and target population are defined; however, the service delivery methodology may be left to the bidder to propose.

RFP waiver: a document used to address an emergency or condition that could not be reasonably foreseen or guarded against resulting in a need to waive the required Request for Proposals (RFP) to purchase services through the open market. This “RFP Waiver” should only last until an RFP can be released and an award made.

Requisition: an initiating procurement action form, which includes information such as vendor, goods/services to be secured, and source of funding to finance the procurement. Upon review and approval, this may result in the issuance of a State of Delaware purchase order.

Services: activities and programs procured to benefit the department or its clients.

Solicitation of quotations: a request issued to potential contractors, inviting them to state their costs for providing services.

Spending plan: comprehensive expenditure plan (or budget) prepared and maintained by each purchasing division and validated by the assigned DMSS fiscal unit staff which reconciles expenditures against the division's authorized anticipated expenditures and appropriated budget authority.

Supplies and materials: goods, such as office and computer supplies, commodities (food, fuel, etc.), equipment, tools, and construction materials, used in support of the operations of the department.

Training: activities designed to impart knowledge and/or skills to an individual or a group of individuals.

Unit cost contract: a contract that secures services based on pricing and reimbursement for units of service. A unit of service can be specified by a time period (e.g., hour, day, month, year, etc.) or by a specific service component or deliverable (e.g., physical exam, x-ray, session, diagnostic evaluation, report, etc.).

4. Policy

The cabinet secretary is ultimately responsible for the review and approval of all department bid and contract activities. The secretary may delegate certain tasks and authority to the various divisions and deputy secretary.

Each division is responsible for the initiation of contract and contract waiver requests except those listed below. The Division of Management Support Services, in consultation with the Office of Management and Budget, will execute construction, renovation, maintenance, janitorial, and trash removal contracts.

The secretary, pursuant to the authority given to their office by [29 Del. C. sec 9005 \(6\)](#), may delegate the authority to sign contracts with limited exceptions.

A. The secretary's signature is required in the following circumstances:

- Those contracts and contract amendments in which the total value of the contract or amended contract exceeds \$500,000 annually.
- Contracts for organizational consulting services regardless of contract amount.
- Contracts initiated within a specific division when that division director is acting as the secretary's designee for the purpose of signing contracts.
- Contracts with current state employees and with former state employees who have left state service in the two years prior to the contract's signature date. Such contractors must first demonstrate compliance with [29 Del. C. § 5805](#) by providing documentation of Public Integrity Commission approval.
- Contracts with individuals who are expected to perform a full-time, ongoing task like that of a full-time equivalency (FTE) employee.
- Contracts with other state agencies outside of the department.
- Contractual arrangements with providers which replace contracts that were discontinued due to unsatisfactory performance or cost considerations.

B. The secretary's pre-approval is required in the following circumstances:

- Contracts which include any performance-based incentives. Incentives must be pre-approved by the secretary before the contract is routed for review.
- Mid-year cost reimbursable budget increases.

C. All DSCYF generated contracts require a minimum of two levels of authorized signature. One is the cabinet secretary (or designee) and the other is the purchasing

- division director (or designee). Only the secretary, division directors or their designees may sign contractual purchasing agreements of any type for any dollar amount.
- D. The following types of contracts or conditions will require additional approvals. These approvals must be obtained before the contract is routed to the contractor for signature.
- MIS services, hardware, and software: DSCYF MIS unit and Department of Technology and Information (DTI).
 - Telecommunication equipment: DSCYF MIS unit and Department of Technology and Information (DTI).
 - Training and consultation services not unique to the work of DSCYF: Office of Management and Budget (OMB) via request submitted by the DMSS Grants & Contracts Unit.
 - Use of Fleet vehicles in contracts: Insurance Coverage Office and Office of Fleet Services.

5. Procedures

General Considerations

- A. The department selects providers based on factors including, but not limited to, quality, cost, and location.
- B. Purchase orders must be consistent with the provisions of the [State Budget and Accounting Policy Manual](#).
- C. In compliance with Delaware Code ([29 Del. C. § 5805](#)) competitive award procedures must be applied for all contracts with state employees for \$2,000 or more annually. The Delaware Public Integrity Commission must be consulted for any such purchase.
- D. All purchases, with or without a written contract, using contractual funds must be represented on the purchasing division's Spending Plan.
- E. In compliance with Delaware Code ([29 Del. C. § 6512](#)) service providers may not begin providing services until the contract is fully executed.
- F. Service providers may not begin providing services until the required purchase order is approved by OMB unless there are documented circumstances which create concerns for the health/safety of the client.
- G. All invoices must be approved by a State of Delaware employee prior to submission to the Fiscal Unit for payment.

- H. Contractors are required to provide their own equipment, tools, supplies, etc. necessary to complete their contracted tasks unless the department identifies special circumstances or funding requiring otherwise.
- I. Agreements originating from the contractor must be reviewed by a DMSS procurement administrator before signing.

Use of Contracts/Contract Waivers and Purchase Orders/Requisitions

- A. While a contract is always an available option, a contract is *required* when the professional service purchases from the same provider are anticipated to cost (in aggregate) more than \$9,999.99 in a fiscal year
- B. All contracts must be supported by an approved purchase order. The fully executed contract will be used to initiate the purchase order in lieu of a requisition unless exempted under the [State Budget and Accounting Manual \(Section 7.3 – Direct Claims\)](#). Purchase orders may be strategically established for exempted federally funded and child welfare contracts to control the flow and facilitate the tracking of federal expenditures and state matching funds if deemed necessary.
- C. Contracts are *not required* in the following situations, in which only a requisition and purchase order (PO) are used:
 - for purchases where the professional service is anticipated to cost \$9,999.99 or less annually and has no complicated specifications or terms,
 - to establish a temporary, short-term arrangement to address an emergency or condition that could not be reasonably foreseen or guarded against where the health or safety of a department client could be jeopardized by waiting for completion of regular contracting procedures ([State Budget & Accounting Manual 7.3, 7.4.2](#)). This exception requires an approved contract waiver and may last for up to 45 days at which time a contract must be executed to continue service delivery if the provider is agreeable.
- D. When a purchasing division determines that an exception to the required use of a contract is appropriate and necessary, the purchasing division staff shall document the reasons for the exception using the Contract Waiver Request. The request must then complete the internal department approval process facilitated by the DMSS Grants & Contracts Unit.

Such exceptions can include but may not be limited to:

- The health or safety of a department client could be jeopardized by waiting for the execution of a contract.

- A critical need, not necessarily impacting on client health and safety, has been determined to exist as the result of an emergency or condition that could not be reasonably foreseen or guarded against or the service cannot be obtained through normal procurement procedures. Examples might include emergency medical or treatment services, an unanticipated service need for an out of state placement. Such a waiver can only be justified long enough to address the unforeseeable, critical condition and must be followed by a competitive award process to continue the purchase of the service.
- A Medicaid-funded client or their family requests services be provided by a specific service provider not already under contract.

Selection of Providers

A. Open Market Purchase

- No competitive award process is required, and procurement may be via the open market when anticipated cumulative annual expenditures for like professional services will be less than \$150,000.
- Department staff shall review the state's [Office of Supplier Diversity online directory](#) for vendor consideration for certified minority, woman, veteran, service disabled veteran, and/or individual with disability owned business enterprise when making such open market, “under-threshold” procurement.

B. Competitive Awards

- For anticipated cumulative annual expenditures for like professional services of \$150,000 and above in any state or federal fiscal year, the following competitive award procedures must be implemented and be documented ([29 Del. C. §6981](#)):
 - a. The department issues a written request for proposals (RFP).
 - b. The request for proposals is publicized to ensure public notice by submitting it to Government Support Services for posting on the state's [procurement portal](#).
 - c. Bidders submit written proposals by the advertised deadline.
 - d. Proposals are reviewed in a closed panel convened by the department.
 - e. The proposal review panel submits recommendations to the purchasing division director for consideration. The division director documents the division's final decision on the contract award(s).
 - f. A summary of the panel review proceedings is maintained on file at the department for public review.
 - g. Bidders are notified of the status of their bid within 60 days of close of bids. If such notice is expected to take more than 60 days, notice shall be provided to all bidders.

- The duration of a procurement award under this section shall be for an initial period not to exceed five (5) years or a lesser period if stated in the RFP. At the end of the period designated in the RFP, the procurement shall again be subject to competitive award procedures. Exceptions to this rebidding requirement may be approved on a case-by-case basis by the Cabinet Secretary or designee using the RFP Waiver form.

C. Competitive Award Process Waiver

- A required competitive award process may be waived for contractual procurement of like professional services with anticipated cumulative annual expenditures of \$150,000 or more when:
 - a. The health or safety of a department client could be jeopardized by waiting for the completion of competitive award procedures.
 - b. There exists sufficient well documented evidence that there is only one source for the required professional services and that no other reasonable and appropriate sources are available. Instances might include clients with unique or unusual service needs or circumstances, or services are located out of state.
 - c. A competitive bid process fails to produce a successful bidder, the department may seek out a provider on the open market and may consider the unsuccessful solicitation the basis for non-competitive purchase of the specified service for the term of three years.
 - d. A critical need, not necessarily impacting on client health and safety, has been determined to exist as the result of an emergency or condition that could not be reasonably foreseen or guarded against or the service cannot be obtained through normal procurement procedures. Examples might include emergency medical or treatment services or an unanticipated need for an out of state placement. Such a waiver can only be justified long enough to address the unforeseeable, critical condition and must be followed by a competitive award process to continue the purchase of the service.
 - e. A federal agency approves the use of a specific contractor(s) in awarding a grant.
 - f. On a case-by-case basis to allow time to complete a specific project or continuation of a federally funded program or project which has had funding extended.
 - g. A Medicaid-funded client or their family request services be provided by a specific service provider not already under contract.
 - h. A court order has been issued which requires services from a specific service provider not already under contract.

- The purchasing division's final decision on non-competitive contract awards is made by the division director who submits an RFP Waiver request for internal review which requires the approval of the secretary or designee. The same purchasing division director may not sign the waiver as the secretary's designee.
 - a. Use of the non-competitive negotiation process must be documented by the purchasing division prior to contract execution and depending upon the circumstances may be necessary for each subsequent contract renewal or extension thereafter. Such documentation must demonstrate a substantive and defensible basis for not using the competitive negotiation process.
 - b. The waiver documentation shall be reviewed by DMSS to ensure compliance with Delaware Code and this policy and be kept on file in FOCUS once fully approved.

Contract Language Requirements

Whenever a contractor produces communication materials as part of the contract, certain requirements may apply. See [DSCYF policy #115](#) for details.

Contract monitoring

- A. At the beginning of each state fiscal year, each purchasing division shall establish a monitoring schedule to be implemented throughout the year to ensure that a reasonable sample of provider services are examined. The DMSS Grants and Contracts Unit shall coordinate the annual monitoring schedule developed with the purchasing divisions which will result in a single comprehensive schedule. The annual schedule shall be posted in a location accessible by all internal stakeholders by September 30 of each year. The monitoring focus may be on varying aspects of the service purchased through the contract but must ensure that both contract compliance and client outcomes are reviewed.
- B. General minimal monitoring frequency guidelines by service setting are as follows:
 - First year program award: for direct service contracts awarded to new providers or for types of direct services new to DSCYF, a monitoring shall occur within 12 months of direct service implementation. The type (on-site or desk) will be determined by the purchasing division.
 - Residential service: a site visit minimum of once every three years if the facility had admissions or placements at any point during that three-year period; an approved waiver to document exceptions is required.
 - Non-residential direct service: site visit minimum of once every three years with active service delivery at any point during that three-year period; an approved waiver to document exceptions is required.

- All non-direct services: the purchasing division(s) shall determine the frequency for reviewing this type of contract.

- C. A written report of findings must be prepared for each completed monitoring activity and documentation must be prepared of follow-up actions related to any required corrective actions. The final monitoring report shall be stored in FOCUS in the service provider's monitoring record.

- D. Provider performance documented in a monitoring report may be included in the review process when making subsequent contract awards.

6. Legal Authority / Associated Regulations/Requirements

[29 Del. C. § 5805](#)

[29 Del. C. § 6512](#)

[29 Del. C. §6981](#)

[29 Del. C. § 9005 \(6\)](#)

[State Budget and Accounting Policy Manual](#)

[DSCYF policy #115](#)

7. Responsibility for this Policy

The DMSS Grants and Contracts Unit is responsible for guidance related to this policy.